IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Civil Appellate Side

Second Appeal No. 1541 of 2005
with
Civil Application No.2172 of 2005

M/s Geetanjali Saree Emporium ..Appellant

vs.

Vijaykumar Laxman Vaidhya
and others ..Respondents

(2) Second Appeal No.1542 of 2005
with
Civil Application No.2173 of 2005

M/s Geetanjali Saree Emporium ..Appellant

vs.

Kolhapur Municipal Corporation
and others ..Respondents

Mr.A.M.Kulkarni for appellant.
None for respondents.

CORAM: S.C.DHARMADHIKARI J.
22nd **August, 2007**

P.C.

1. These two second appeals are directed against the judgment and orders of the Courts below. The appellant's suit against the action of the Kolhapur Municipal Corporation threatening to demolish/remove the mezzanine floor has been dismissed and that is how the second appeals.

2. In the mean while, a decree was passed for possession against the appellant, in a suit filed by the landlord. The very same construction is the subject matter of the landlord's suit as well. The ground for eviction is under section 108(o) of the Transfer of Property Act read with sec.13(1)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The landlord's suit is also decreed.

3. In the second appeals a notice was issued and the respondents are served. Shri Borkar is appearing for the heirs and legal representatives of the deceased landlord whereas non appears for Kolhapur Municipal Corporation. Parties were directed to maintain statusquo after this Court passed the order taking on record an undertaking of the Appellant in Writ Petition No.9411 of 2005, which was directed against the decree of eviction against him in the suit of the landlord. The undertaking which is part of the record of the second appeal reads thus:

"1...

2....

3. I say that the objections raised by the

respondent as to the alleged alteration made by me in the suit shop pertain to extension of mezzanine floor. This alleged offencing extension admeasures as under:"

(i) 25 ft. South North;

(ii) 10 ft.East West

The aforesaid extension is allegedly effected in the southern portion of the suit shop which originally did have a mezzanine floor but only in the northern portion of the suit shop. This original mezzanine floor admesures 18 ft. south north and 10 ft.east west. It is further alleged by the respondent that the original mezzanine floor is in R.C.C. construction whereas the aforesaid alleged extension is a wooden construction.

4. I hereby undertake to this Hon’ble Court in the aforesaid circumstances as under:-

(a) I will apply to the Kolhapur Municipal Corporation for regularisation of the aforesaid extended wooden mezzanine floor; within two weeks

from today.

(b) In case if the Kolhapur Municipal Corporation refuses to regularise the extended portion of the mezzanine floor referred to hereinabove, I will at my own cost, without causing any damage or destruction of the tenanted premises, remove the aforesaid extended portion of mezzanine floor constructed in wood within two weeks from the receipt of the Order of Kolhapur Municipal Corporation, refusing to regularise the same.

(c) In case if the Kolhapur Municipal Corporation regularises the aforesaid wooden extension, I will not make any further changes in the suit property, pending the hearing and final disposal of the present petition."

4. Thus, without prejudice to the rights and contentions of the appellant in the second appeal, the undertaking was taken on record which contains the statement that the appellant would approach the Corporation for regularisation of the subject mezzanine floor.

5. In all fairness, Shri Kulkarni, the learned counsel

appearing for the appellants states that the appellant did not approach the Corporation for regularisation. Therefore, the structure/portion was removable by the appellant on his own in furtherance of the undertaking and that fact is placed on record by filing further affidavit in writ petition no.9144 of 2005. Shri Kulkarni would urge that the affidavit is without prejudice to the rights and contentions of the appellants/petitioner. In such circumstances, the second appeal be entertained.

6. With the assistance of Shri Kulkarni and Shri Borkar I have perused the judgment of the learned Trial Court as well as the lower Appellate Court. There is no dispute that the Corporation issued the subject notice and the appellant failed to comply therewith. He, therefore, apprehended demolition and filed the civil suit for declaration and permanent injunction. That suit having been dismissed which conclusion is in consonance with the oral and documentary evidence I find no reason to interfere with the judgment and order in that behalf. More so, when the appellant does not dispute that the structure is unauthorised and had to be regularised. He sought liberty in that behalf from this Court and that is how demolition was stayed. Thereafter the appellant did not approach the Corporation for regularisation and

instead pulled down the offending portion. Shri Borkar would urge that this was in breach of the undertaking given to this Court. However, it is not necessary to enter into any larger controversy, more so when the writ petition is also pending. Suffice it to state that I am satisfied from the perusal of the judgment and order of the lower Appellate Court and more particularly the finding on point no.1, which is consistent with the oral and documentary evidence, that there is no merit in the second appeal. No substantial question of law arises in the appeal. Instead the attempt is to have reappreciation and reappraisal of the material which is impermissible inlaw. The second appeals are, therefore, dismissed.

7. Place the writ petition for hearing and final disposal peremptorily on 11th September, 2007.

(S.C.DHARMADHIKARI J.)